International Union, United Mine Workers of America and District 29, United Mine Workers of America *and* New Beckley Mining Corporation. Case 9–CC–1367(1–2)

August 15, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On August 30, 1989, Administrative Law Judge Thomas A. Ricci issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondents filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

The complaint alleges, inter alia, that Respondent District 29 has violated Section 8(b)(4)(i) and (ii)(B) of the Act,[2] based on its alleged picketing of the Comfort Inn with an object to force the motel to cease doing business with labor supply contractor Mahon Enterprises, Inc. (Mahon) in order to force Mahon[3] to cease doing business with the Charging Party. The judge found no violations. We reverse the judge's decision as to the 8(b)(4)(ii) issue and find a violation based on the allegation, but we adopt his dismissal of the 8(b)(4)(i) allegation.

The Charging Party, New Beckley Mining Corporation, operates a mine in Glen Daniels, West Virginia. Mine Workers Local 1895, the bargaining representative of the New Beckley Mining Corporation's employees, struck the mine on January 23, 1989.[4] In February, New Beckley contracted with Mahon to provide striker replacements. Amon Mahon, a principal of Mahon, and the replacements checked into the Comfort Inn in Beckley on February 19 to begin work in the mine. Between 4 and 4:30 a.m. on February 22, an estimated crowd of 50 to 140 persons[5] gathered in the parking lot and surrounding areas of the motel. Many of them wore handwritten tags bearing the name, ''Raleigh County Citizens Against Strike Breakers.'' The motel night auditor contacted the police and called the motel manager, Michael Darby, at home to apprise him of the situation.[6] When Darby arrived at the motel at approximately 4:50 a.m., he heard a few in the crowd shouting, ''How are you doing scabs,'' or ''why don't you go home.'' Out of concern for other motel patrons, Darby went outside to address the crowd, whose tone he described as angry and frustrated.[7]

Darby explained that his grandfather retired from the mines and that his father had started out there and he understood what they were going through but that he wanted the group to leave because they frightened motel guests, many of whom were senior citizens. Specifically, Darby explained, ''[T]hey look out the window and they see this crowd . . . . Then the fire alarm systems goes [sic] off . . . and that just makes it worse.'' Either Everett Accord, president of District 29, or Joseph Carter, president of Local 1895,[8] acting as a spokesman for the crowd,[9] then said, ''Well, I hope that wasn't any of our people,'' and stated that they did not want to leave until they had a chance to tell the striker replacements that they did not appreciate their coming and taking their jobs. Darby explained that the Mahon employees had been instructed not to come out and said he wanted a chance to talk with the replacements to see what he could do. Several persons in the crowd asked why he would rent to scabs, adding, ''Aren't you going to get them to leave?''[10] Another person stated, ''Don't you know they shouldn't be here?'' Darby responded, ''Look, you know, I'll talk to them. They won't be here tonight.'' Either Accord or Carter then said, ''Well give us a minute to talk it over.'' The crowd then opened up to let Darby pass and a minute or two later began to disperse. As Darby was talking with a newspaper reporter, Accord and Carter approached him and Accord introduced himself as president of District 29 and

[1] The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (150), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] The complaint also alleges that Respondent International was a participant in the picketing. The only evidence implicating Respondent International in the alleged unlawful picketing—the testimony of New Beckley Mining Corporation President Bill Little—was discredited by the judge. Accordingly, we affirm the judge's dismissal of the complaint against Respondent International.

[3] The General Counsel excepts to the judge's finding that she moved to strike ''the name of Mahon Enterprises from the pleadings entirely.'' We find the exception to be well-taken. The record shows that her motion, which the judge granted, referred to deleting references to Mahon only from par. 8 of the complaint. Thus the judge incorrectly extrapolated that Mahon was operating the mine as an agent of New Beckley and that the ''mass activity'' was against the alter ego of the struck company, New Beckley.

[4] All dates are in 1989.

[5] Although the judge found that the crowd ranged in size from 90 to 100 persons, the judge did not resolve the accuracy of other testimony that the crowd ranged between 50 and 140 persons. For the purposes of this decision, we find it unnecessary to further delimit the precise size of the crowd.

[6] Although the judge referred to Darby as the owner, the record shows that the motel was owned by a corporation of which his parents were the sole shareholders. He worked there as general manager and also served as an officer in the corporation.

[7] Although there is no evidence indicating that any of those in the mass gathering were responsible for it, motel fire alarms were set off at 5 a.m., about the time police arrived at the scene.

[8] Accord and Carter were standing together in the crowd surrounding Darby and were about 6 feet away from him.

[9] Michael Durham, District 29 executive board member, was also identified as being present.

[10] Neither Accord nor Carter disavowed the requests from the picketers that Darby oust the striker replacements.

introduced Carter as being with the Local. Accord also thanked Darby for his help.

Darby then went to Amon Mahon's room and told him he was concerned about his other guests, explaining that the guests did not know what was going on and that he ''would really like for you fellows to leave.'' Darby asked Mahon to ''help [him] out'' and said, ''If you guys are here tonight, those fellows will be back . . . . I can't do anything to protect you.'' Darby also told Mahon, ''for your protection as well as the protection of the guests, my property, you know, I'd like for you to find someplace else to stay.'' After talking it over with his crew, Mahon called the desk to tell Darby they were leaving. The two arranged to have Mahon's credit card receipt mailed to him. Mahon did not want to risk going to the office to sign it because some members of the crowd were still circling the lot. Later that morning, the local police provided Mahon and his employees with a police escort some 200 yards to an interstate highway.

On the basis of the foregoing, the judge found that the mass action was aimed not at pressuring the Comfort Inn, but simply at communicating with the striker replacements and that it made no difference to the crowd where the striker replacements slept. He opined that ''with this . . . reality of what was going on,'' it was ''immaterial whether or not the union, Local or International, was responsible, or participated in the mass action.'' He concluded, however, that because ''very few'' of the crowd members were identified as ''striking employees of New Beckley Mining . . . [i]t would be difficult to find this was a 'union' activity.'' We disagree on all accounts.

We find that the ''mass activity,'' as the judge characterized it, not only was a ''union activity'' but that it constituted a form of picketing, and that that picketing had an object of forcing the Comfort Inn, a neutral employer, to cease doing business with Mahon in order to force Mahon to cease doing business with New Beckley, thereby violating Section 8(b)(4)(ii)(B), as alleged in the complaint.[11]

Although the number of participants in the mass action who were union members is unknown, it is clear that Accord was there in his official capacity as president of District 29 and, at the least, endorsed the acts of those present in the mass gathering, thus establishing an agency relationship between Respondent District 29 and the other participants. See *Service Employees Local 87 (West Bay Maintenance)*, 291 NLRB 82 (1988). Accordingly, we find no merit to the judge's conclusion that ''[i]t would be difficult to find this was a 'union' activity.'' Further, the finding that such union activity amounted to picketing is warranted despite the absence of picket signs.

Picket signs or placards, while serving as indicia of picketing, are in no sense essential elements for a finding that picketing occurred. See, e.g., *Laborers Local 389 (Calcon Construction)*, 287 NLRB 570, 573 (1987), quoting from *Mine Workers District 12 (Truax-Traer Coal)*, 177 NLRB 213, 218 (1969).[12] Here, the finding that the ''mass activity'' was picketing is established by other elements usually found in picketing. Thus, the crowd of anywhere from 50 to 140 people congregated at the inn in protest of New Beckley's use of Mahon's employees as strikebreakers, representatives from District 29 and Local 1895 were present, and one of them, in the presence of the other, acted as a spokesman for the massed assemblage with Darby, the inn's manager. Clearly, then, the activity in question was related to and in furtherance of the labor dispute between the Respondent and New Beckley and its ally, Mahon. In addition, the crowd's large size and its participants milling about in the inn's parking lot while shouting, ''How you doing scabs'' and ''why don't you go home,'' had all the attributes of mass picketing, attributes that in this case were accentuated by the timing of the crowd's arrival at the inn in the predawn, when the latter's guests likely were sleeping and the general public was not astir. These circumstances militate against a finding that the activity amounted to something less than picketing, such as a public demonstration by a group of citizens who sympathized with the striking New Beckley employees. Indeed, that the crowd's shouted messages were directed only at the presence of the Mahon employees and their removal from the inn is itself evidence that the crowd was engaged in picketing.[13]

It is apparent from the judge's decision, however, that even if he had found that the demonstration constituted union activity and picketing, he nevertheless would still have dismissed the complaint. The judge found that the ''mass activity'' simply was ''to get a message to the strike breakers to stop performing the work'' that ''belonged to the [striking employees of] New Beckley Mining.'' Had that been the sole object, we would find merit to the judge's finding. However, we find that there is evidence that the picketing had a further object, specifically, to have the inn oust the Mahon employees as its guests. Consequently, that a purpose of the picketing may have been to convey a message to the strike replacements does not remove the pickets' conduct from the reach of Section 8(b)(4).

[11] Sec. 8(b)(4)(ii)(B) of the Act makes it unlawful, for a labor organization or its agents to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where an object thereof is forcing or requiring any person to cease doing business with any other person.

[12] That case defines the purpose of picketing broadly to include conveying a message usually intended to influence the conduct of certain persons to stay away from work or to boycott a product or business.

[13] Even were we to conclude that the mass activity did not constitute picketing, we would nevertheless find the statements made by the crowd unlawful. See fn. 15, infra.

It is well settled that picketing (or other coercive conduct) violates Section 8(b)(4) if the object of it is to exert improper influence on a neutral party. *NLRB v. Denver Building Trades Council*, 341 U.S. 675, 689 (1951), *Electrical Workers IBEW Local 501 v. NLRB*, 756 F.2d 888, 892–893 (D.C. Cir. 1985). Although our inquiry must be based on the intent, rather than on the effects of the union's conduct, *International Rice Milling Co. v. NLRB*, 341 U.S. 665, 672 (1951), the union's intent is measured as much by the necessary and foreseeable consequences of its conduct as by its stated objective. *Longshoreman ILA Local 799 (Allied International)*, 257 NLRB 1075 (1981). Thus we look to the ''totality of the circumstances'' to determine whether the union's conduct demonstrates an unlawful purpose. *Electrical Workers IBEW Local 501*, supra at 893.

In the instant case, the circumstances lead us to find that the picketing had an unlawful object. The mass picketing began before dawn on the inn's premises. There was no forewarning to the inn that it would occur and no attempt to inform the inn that it was not going to be the subject of the picketing. See *Mississippi Gulf Coast Building Trades Council*, 222 NLRB 649, 650 (1976), enfd. mem. 542 F.2d 573 (5th Cir. 1976). So far as the inn knew, when the picketing commenced, it was directed at the inn and all its guests, not just Mahon's employees. No picket signs were displayed or in evidence that would have identified the nature of the dispute that led to the picketing or the party with whom there was a dispute. The Board has long held that in a common situs situation the failure of a picketing union to comply with any one of the *Moore Dry Dock Co.*[14] criteria gives rise to a strong, albeit rebuttable, presumption that the picketing had an unlawful secondary object. *Iron Workers Local 433 (United Steel)*, 293 NLRB 621 (1989); *Service Employees Local 87 (Pacific Telephone)*, 279 NLRB 168, 175 (1986); *Electrical Workers IBEW Local 332 (W.S.B. Electric)*, 269 NLRB 417, 421 (1984); and *Salem Building Trades Council (Cascade Employers)*, 163 NLRB 33, 35 (1967), enfd. mem. 388 F.2d 987 (9th Cir. 1968).

Further, we find that, far from simply wanting to talk with Mahon employees, the pickets sought their removal from the establishment. The judge's analysis ignores undisputed facts that even as Accord or Carter was telling Darby that the people would not depart until they had a chance to tell the strike replacements that they did not appreciate their coming and taking their jobs, pickets asked Darby to get the replacements to leave or declared to him that they should not be staying at the inn. Accord and Carter did not disavow these statements by the pickets. Moreover, the pickets did not begin to disperse until Darby assured them that the Mahon employees would not be at the inn that night—a fact that strongly suggests that the pickets were more interested in the departure of those employees from the inn than in pleading their case to them. In any event, as the pickets began to disperse, Accord and Carter introduced themselves to Darby in their official capacities and thanked him for his help. We therefore find that these union representatives condoned and adopted the comments and objectives of the pickets as their own. See *Boilermakers Local 1 (Union Oil)*, 297 NLRB 524 (1989) (a union is responsible for picketing misconduct at the scene if it does nothing to disavow it).

Accordingly, having found that Respondent District 29 engaged in picketing with an unlawful secondary object, we find that it threatened, restrained, and coerced the Comfort Inn within the meaning of Section 8(b)(4)(ii)(B) of the Act.[15] *Service Employees Local 87 (Pacific Telephone)*, supra; *Salem Building Trades Council (Cascade Employers)*, supra.

Notwithstanding that finding, we affirm the judge's dismissal of allegations that the Respondent by the above conduct also violated Section 8(b)(4)(i)(B) of the Act.[16] In the circumstances of this case, although it is fully apparent that the Respondent was engaged in conduct directed at the Comfort Inn as a neutral employer, the record is decidedly more ambiguous as to whether this activity was likewise directed at any individual employed by the neutral employer. Although it was likely that the Comfort Inn would have someone present at all times to assist its guests there is no indication that the Respondent or anyone in the crowd that assembled outside the motel at about 4 a.m. on February 22 made any attempt to initiate any specific communication with anyone employed by the motel, nor was any statement made by persons in the crowd directed generally to anyone other than those at the

[14] 92 NLRB 547 (1950). Nor did the shouted statements of the pickets and the statements of Accord and Carter identifying Mahon as their target overcome this failure of compliance. See *Hotel & Restaurant Employees Local 36 (Holiday Inn Downtown)*, 216 NLRB 980, 984 (1975), enfd. mem. 539 F.2d 706 (4th Cir. 1976). Moreover, as found infra, statements by the pickets enmeshed the inn, as a neutral person. Id. at 984.

[15] The statements of the pickets to Darby seeking the removal of Mahon employees from the inn also support this finding. *Electrical Workers IBEW Local 11 (L.G. Electric)*, 154 NLRB 766, 768 (1965). Moreover, even if the ''mass activity'' did not constitute picketing, we would find those statements threatening and coercive of Darby and hence in violation of Sec. 8(b)(4)(ii)(B) because Respondent District 29 adopted them as its own, as described above. In this regard, the Supreme Court's decision in *NLRB v. Servette*, 377 U.S. 46, 52–54 (1964), makes clear that subsec. (ii) of 8(b)(4) condemns attempts to induce the exercise of a manager's discretion to cease doing business with the primary employer if the inducement would ''threaten, coerce, or restrain'' that exercise. See also *Los Angeles Building Trades Council (Sierra South)*, 215 NLRB 288, 290 fn. 4 (1974).

[16] Sec. 8(b)(4)(i)(B) of the Act makes it unlawful, among other things, for a labor organization or its agents to induce or encourage any individual employed by any person engaged in commerce or in any industry affecting commerce to engage in a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services where an object thereof is forcing or requiring any person to cease doing business with any other person.

motel who were employed by the labor supply contractor, Mahon Enterprises, Inc. Specifically, we note that the only individual employed by the Comfort Inn who was initially present was the night auditor (Leona McKinney, mistakenly referred to by the judge as the ''night man''), and there is no indication that she had any contact with the Respondent or any members of the crowd. Even assuming that the Respondent had some basis for being on notice that the night auditor was present at the motel, there is insufficient basis to find that the actions of those in the crowd were directed at inducing or encouraging her to engage in any refusal to work.[17] Moreover, on the arrival of Motel Manager Darby, and in his discussion with the Respondent as to the nature of the problem, there never was any attempt made to have him engage in any refusal to work for his employer.[18] Accordingly, we affirm the judge's decision to dismiss the 8(b)(4)(i)(B) allegations in the complaint.

CONCLUSIONS OF LAW

1. The Respondent, District 29, United Mine Workers of America, is a labor organization within the meaning of Section 2(5) of the Act.

2. Laurel Lodge Enterprises, Inc., d/b/a Comfort Inn, Beckley, West Virginia, is a person engaged in commerce and is an industry affecting commerce within the meaning of Section 2(6) and (7) and Section 8(b)(4) of the Act.

3. The Charging Party, New Beckley Mining Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. The Respondent, District 29, United Mine Workers of America, has engaged in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

The Respondent, District 29, United Mine Workers of America, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening, coercing, or restraining any person engaged in commerce, where an object thereof is to force or require the Comfort Inn or any other person to cease doing business with Mahon Enterprises, Inc. or New Beckley Mining Corporation.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post in conspicuous places at its business office, and meeting halls within its geographical jurisdiction, copies of the attached notice marked ''Appendix.''[19] Copies of the notice, on forms provided by the Regional Director for Region 9, after being duly signed on behalf of Respondent District 29 by its authorized representatives, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicious places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of the notice to the Regional Director for posting by New Beckley Mining Corporation and the Comfort Inn, Beckley, West Virginia, those companies being willing, at all locations where notices to employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of receipt of this Order what steps Respondent has taken to comply.

[17] Although it is not determinative of the object of the Respondent's conduct, we observe that the only action the presence and activity of the crowd that night induced the night auditor to do was to call the motel manager and the local police.

[18] Cf. *NLRB v. Servette*, supra at 49–50, holding that a manager is included within the meaning of Sec. 8(b)(4)(i)(B) of the Act to the extent that manager is an ''individual employed by any person engaged in commerce or in an industry affecting commerce.''

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT restrain or coerce any person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require the Comfort Inn or any other person to cease doing business with Mahon Enterprises, Inc. or New Beckley Mining Corporation.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA

Deborah Grayson, Esq., for the General Counsel.
James W. McNeely, Esq., of Beckley, West Virginia, and *George N. Davies, Esq*., of Washington, D.C., for the Respondents.
Forrest H. Roles, Esq. (Smith, Heenan & Althen), of Charleston, West Virginia, for the Charging Party.

DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Administrative Law Judge. A hearing in this proceeding was held at Beckley, West Virginia, on May 16 and July 11, 1989, in complaint of the General Counsel against the International Union, United Mine Workers of America, and against District 29, United Mine Workers Union (the Respondents). The complaint issued on April 7, 1989, on charges filed by New Beckley Mining Corporation (the Charging Party) on February 24, 1989. The sole issue presented is whether the two Respondents violated Section 8(b)(4) of the Act by bringing pressure on a company called Comfort Inn for the purpose of causing it to cease doing business with either another company called Mahon Enterprises, Inc., or with a number of people who had rented rooms in a motel run and operated by a company called Comfort Inn. Briefs were filed by all three parties.

On the entire record and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

New Beckley Mining Corporation operates a coal mine in the vicinity of Glen Daniels, West Virginia, where, during the 12-month period preceding issuance of the complaint, it sold and shipped from that mine goods and products valued in excess of $50,000 to points outside the State of West Virginia.

Laurel Lodge Enterprises, Inc. is engaged in the operation of a motel, furnishing food and lodging for guests in Beckley, West Virginia. During the same 12-month period, it derived gross revenues in excess of $500,000. Also during that same period in the course of its business it purchased and received at that location goods and materials valued in excess of $5000 directly from out-of-state sources.

I find that both New Beckley Mining Corporation and Laurel Lodge Enterprises, Inc. are employers within the meaning of the statutes.

II. THE LABOR ORGANIZATIONS INVOLVED

I find that International Union, United Mine Workers of America and its District 29 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The United Mine Workers of America, acting both through its International Union and its District 29, has long represented the mining employees of New Beckley Mining Corporation as bargaining agents. On January 23, 1989, the Union called a strike at the Charging Party's mine and all employees ceased work. On about February 19 the mining company contracted with an out-of-town company called Mahon Enterprises, Inc., to obtain strike replacements. Mahon is in the business of finding employees for any company that requires them. It found 16 persons and arranged for them to sleep at the Comfort Inn while working for Beckley Mining Co. The men checked in at the motel on the evening of February 19, and worked at the mine during a 2-day period, February 20 and 21.

The next day, at about 4 or 4:30 a.m., a crowd of people gathered in the parking areas of the motel and just stood around as a mass movement. The night man in charge of the motel quickly called the owner, Michael Darby, on the telephone and told him about the people gathered there. Darby first telephoned the police to let them know about the crowd and then quickly went to the motel. He was there in a matter of minutes. He testified that he quickly understood what the trouble was, that the people were protesting the fact the men who are sleeping there were working across the picket lines at the mine. Very politely Darby told them that while he sympathized with their dilemma he wished they would leave his premises. He no sooner told them that when they started to leave. By 5:30 or 6 a.m. the whole crowd was gone.

In plain language this is a secondary boycott case; a violation of Section 8(b)(4) is alleged in the complaint. The Union had no dispute with the owner of the motel, Comfort Inn. The labor dispute was between New Beckley Mining Enterprises and the Union. The allegation must be that the Respondent labor organization put pressure on a secondary employer to compel it to cease doing business with some other company, or with somebody else. Mahon Enterprises is the only ''employer'' other than New Beckley Mining and Comfort Inn named in the complaint. As written, the complaint clearly says the Union put pressure on the employees of Comfort Inn in order to compel that company to cease doing business with the company Mahon Enterprises, Inc. There is a confusion in the General Counsel's presentation of the case. At the start of the hearing she struck the name of Mahon Enterprises from the pleadings completely. I do not really understand her explanation stated at that point in the record. ''The reason I am doing that is that it appears through the pleading that Mahon is a neutral and we do not allege Mahon to be a neutral. It's a labor supplier and was performing struck work.'' As best I can understand this position it is that the Union was putting pressure on the Mahon Company to force *it* to cease doing business with New Beckley Mining. If the strikebreaking employees, then at the motel, were employees of the Mahon Company one could say Mahon was operating the mine as an agent of New Beckley Mining Company. Under this view of the case the mass of people gathered there that morning were picketing the operations of the mine by the alter-ego of the struck Company.

In my considered judgment, and in the light of the record testimony in its entirety I do not think resolution of such confusing questions is necessary here. To me the essential

question is: What was the purpose of all those people gathered in those private parking areas that morning? Were they trying to interrupt the business being carried on between one company and another, or were they simply trying to get a message to the strikebreakers to stop performing the work that, in the opinion of the demonstrators, rightfully belonged to the people who are on strike against New Beckley Mining?

It is clear to me, on this record, that the purpose of the entire mass activity that morning, on the private parking lot of Comfort Inn Motel, was to get a message to the 16 strikebreakers who were there that they should cease working across the Union's picket line at the mine. And the deciding testimony is that of Michael Darby, the owner of the motel. He spoke for the one ''business'' which could be called neutral here. He did not file the charge in this case—a clear indication that he did not consider the mass activity—even if the Union was responsible for it—as directed against him, or his commercial operation. The charge was filed instead by the struck mining Company!

From Darby's opening testimony describing the scene as soon as he arrived at the motel:

> A. Well, I heard a couple of men say-like, how are you doing, scabs, or why don't you go home. Something like that. And then when I came out I went out into the west parking lot there, just kind of in the middle of where everybody was. And I said—introduced myself. I'm Mike Darby, I'm the manager here, and could I just talk to you fellows for a minute. And I said, you know, I understand your position. My grandfather retired from the mines and my dad started out in the mines and, you know, I understand a little of what you're going through. But, you know, my concern, I want you to consider the other guests here. A lot of them are senior citizens and they just don't understand what is going on here . . . and I said, well, anyway, they are afraid, and, you know, why don't you leave and just give me a chance to see what is going on. You know, to see what I can do here. And they said they didn't want to leave until they got a chance to talk to the—to these guys. That they just wanted to let them know that they didn't appreciate them coming taking their jobs and that's why they had come.
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> Q. Now, who said that?
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> A. Mr. Carter or Mr. Accord. . . . So, why don't you just leave and give me a chance to see what I can do, to talk to them and—and go. . . .
>
> Q. So, after you said you would ask them to leave, what happened after that?
>
> A. Well, then again, I don't know whether it was Mr. Carter or Mr. Accord, said, Well, give us a minute to talk it over. And then they kind of opened up and let me out. And I walked over to one of the police cruisers and said, I think maybe they're going to go. Well, just within a minute they did, you know start going to their vehicles and leaving.

This was the General Counsel's principal witness in support of the complaint. What clearer proof can there be that the purpose of the mass action by all those people was simply to communicate with the strikebreakers exactly as do all picket lines? It made no difference to them where the strikebreakers slept. That was of no concern to them.

When the strikebreakers registered at the motel on February 19, they made clear, as the registration slips show, that they planned to leave on the February 22. This very fact belies the General Counsel's contention that the purpose of the demonstration was to get those people to leave the motel. When Darby, the motel owner, brought to their attention that the activities at that location might embarrass other tenants of the motel, quickly they all went away. Again, clear proof that the idea of pressuring, or annoying the motel owner, had never entered the minds of all these people.

Darby's testimony continues. When one of the strikebreakers asked him why all this was going on, ''Are you kicking us out?'' Darby's answer was: ''No. You know, I wouldn't insult you by coming here and telling you I was going to kick you guys out. But I'm just telling you what my concerns are I'm asking you to help me out. You know, if you can, help me out. I said, you know, if you guys are here tonight, those fellows will be back. You know, I can't—I can't do anything to protect you.''

There is not the least indication in the entire record of any act of violence or force by any of the many demonstrators. The complaint allegation that the union officials and others ''threatened Comfort Inn and Mahon with violence'' is completely unsupported. Darby said he felt ''apprehensive'' only because the police, before they got there, warned him to be careful.

Later that day, an article appeared in the local newspaper quoting Darby as having ordered the strikebreakers out of his motel. Such a report would fit nicely into the General Counsel's theory of pressure on the neutral employer to cease doing business with his customers—in the language of the statute. When Darby saw that item in the paper he immediately called the publishers and told them that he had been misquoted. The very next day that same newspaper corrected its error and made clear Darby had not reacted to the demonstrators by telling anyone to leave the premises. In short, there was not pressure on him, or on anyone connected with his business.

With this the reality of what was going on, it becomes immaterial whether or not the Union, Local, or International, was responsible, or participated in the mass action. Everett Accord and McCarter, union agents, were present in the crowd. Walter Cooper, one of the strikebreakers, even testified that ''He [Accord] came walking through the breezeway. He was trying to quiet some of the guys down that was yelling the gestures. He told them to hold it down.'' In the crowd of 90 or 100 people, very few striking employees of New Beckley Mining were identified. There were a number of women and old men in the crowd. It would be difficult to find this was a ''union'' activity. But, as I said, even if it were so found, the purpose, and the activity that took place have not been proved to have been a violation of Section 8(b)(4) of the Act.[1]

There were 9 or 10 policemen about the premises, each in a car. A police chief, then present, testified, but all he said

[1] The General Counsel offered, as proof that the Union was responsible for the entire mass activity, the testimony of strikebreaker Cooper that he saw ''Jack Rocks'' on the ground in the parking lot that day ''No one else uses them but the union.'' I will not demean this decision with comments about such testimony.

is that policemen just sat in there cars and took no action. He also made clear that none of the strikebreakers left the motel until after all the demonstrators were gone! If there is any doubt as to the correctness of my decision to dismiss this complaint, it is completely removed by Darby's closing testimony.

> Q. Mr. Darby, did any person in the group in the parking initiate contact with you?
> A. No.
> . . . .
> Q. Do you have any information that they initiated any contact with you employees?
> A. No, I don't.
> . . . .
> Q. Why do you believe, what opinion do you—or do you have any opinion as to why they gathered in your parking lot?
> A. Well, my opinion is that they gathered there, like they said, to let the guys no [sic] they weren't happy with them coming, trying to take their jobs away.
> . . . .
> Q. My question was, and I think you've answered it, do you not just testify that your opinion is that they gathered there to ask the replacement workers not to go to work?
> A. Right, not to work, not to be there, go back home.
> . . . .
> Q. What did they—they asked you just that be able to speak to the Mahon Enterprise employees?
> A. Right.

Billy Little, president of New Beckley Mining Company, who does the bargaining with the Union for its employees, was asked by Marty Hudson, a negotiator for the United Mine Workers, to meet and discuss the items that were still in dispute. He went to Charleston, a distance from Beckley, on February 22, where Hudson was carrying on negotiations with another company. The two men spoke for some time about the various subjects which had divided them in their bargaining. Hudson was trying to reach an accord with the company. They spoke for about an hour, and could not reach agreement. In the course of their conversation, according to Little's testimony, Hudson spoke as follows: ''Then he mentioned the—I'm not sure at this point whether he mentioned the picket line at the mines or after, but he made mention of the Comfort Inn, we surrounded the Comfort Inn this morning. And that's just an example of what we can and will do.''

Hudson also testified about the negotiation attempts he made that day with Little, but said clearly there was no mention whatever about what had taken place at the Comfort Inn earlier that morning. Hudson lives far away from Charleston. He said he left his home at 5:30 that morning to take a plane to get there. I have no reason not to believe him. In the attempt to reach an accord with the representative of this mine, he would hardly have injected an acrimonious element in the conversation. My finding is that there was no talk about the New Beckley-Comfort Inn incident in the conversation Little had with Hudson that day.

Of course, even where I to believe, which I do not, that the United Mine Workers agent told Little his Union had ''surrounded'' the Comfort Inn, it would not alter the fact that the object of the mass demonstration was not to put pressure on the Comfort Inn company, but only to communicate with the strikebreakers, as do all pickets.

If the General Counsel can quote one newspaper article, perhaps another can also be quoted. In its February 23 issue, appears the following:

> Accord said the assembly of UMW Miners was intended only to demonstrate their displeasure with replacement workers, and to persuade them not to report to work at the Glenn Daniel Mine.
>
> ''We understood they had to be to work at 4:30 so we came out to let them know we don't appreciate them being here.'' the UMW official said. ''Our families need to feed their people. Theirs do, too, but we wanted to let them know we don't like the idea of them taking our jobs.''

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

I recommend that the complaint be, and it is, dismissed in its entirety.[3]

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[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] Dismissal here is completely consistent with the position the Union took on the very same day it filed its charge, which is the basis of this proceeding. On February 24, 1989, it filed a charge with the Board's Regional Office—Case 9–CB–7223—explicitly saying:

> On Wednesday, February 22, 1989, Respondent, acting through International Union agents, massed individuals in such numbers on behalf of the Respondent as to intimidate a small group of employees present in a hotel in Beckley, West Virginia, in an effort designed to intimidate them from exercising their Section 7 rights to work and assist the Respondent [sic] in its it labor dispute with New Beckley Mining Corp. The Respondent and its agents gathered in masses of over 100 at approximately 3:00 a.m., in a successful effort to intimidate a labor contractor performing work at New Beckley Mining Company to cease working.

I cannot imagine a better support for my decision in this case.